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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,857	10/27/2003	James D. Krol	6159	9239
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EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
03/11/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/692,857

Applicant(s)

KROL, JAMES D.

Examiner

Lien T. Tran

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 1-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the response filed 12/29/08, applicant amends claim 1 to add the limitation of "a base layer of non-liquid ingredient". The limitation is not supported by the original disclosure because the specification does not have any disclosure excluding liquid ingredients. Claim 4 has the same problem as claim 1; the specification discloses tomato sauce which is not considered to be non-liquid food product because tomato sauce contains water. The same problem is noted in claim 5 because vegetables and fruits both contain water which would not be considered as non-liquid. Claims 7-8 have the same problem as claims 4-5. Claim 11 has the same problem as claim 1. Claim 14 has the same problem as claim 5.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase "non-liquid ingredients" is indefinite because it is not known what would be considered as "non-liquid ingredients". It is not clear what is excluded or included from such phrase and the specification does not define what will constitute "non-liquid ingredients". The specification discloses the base layer

comprises vegetables and fruits which are known to contain water; thus, it is not clear what is intended by " non-liquid food ingredients".

Claims 4,5,7,8,11,14 have the same problem as claim 1.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the article of recipes for " Crustless Pizza" in view of the Google Group disclosure.

The recipe for Deep Dish Pizza teaches sprinkling shredded cheese over the bottom of dish, spreading on pizza sauce, sprinkling mozzarella, piling on topping and baked until bubble and brown. The pizza is allowed to stand for 10 minutes before cutting. The article also disclose crustless pizza made by forming a base layers of zucchini or spaghetti squash mixed with eggs and mozzarella cheese, spreading tomato sauce on top of the base layer, adding additional topping layers and baking the pizza for 25 minutes.

The recipe does not teach forming a mixture of high gluten flour and baking powder, the baking temperature as claimed, freezing, thawing and reheating.

The disclosure on April 1, 2003 shows that it is known to make low carbohydrate crust using a little flour and some whey protein.

It is known in the art to make low carbohydrate pizza by making low carbohydrate crust using little flour and whey protein. It would have been obvious to one skilled in the art to add flour and protein to the crust when making the Deep Dish Pizza to obtain different texture and flavor. The pizza is still low in carbohydrate because only little flour is used; the precise little amount of flour can vary depending on the taste, texture and amount of carbohydrate desired. As to the limitation of the base layer of non-liquid

ingredients, it is unclear as explained in the 112 rejection what the limitation means. As far as the art rejection is concerned, the new limitation does not define over the prior art. The article teaches one recipe in which the cheese is sprinkle over the bottom of the dish; this is a base layer or the crust. If the little flour and protein is added, it would have been obvious to one skilled in the art to add it to the cheese because the discussion teaches to prepare a crust with the little flour and protein. The egg mixture is poured over the cheese; thus, it is an additional layer which is not excluded by the claim. Furthermore, even if the egg mixture is part of the cheese layer, the claims still do not define over the prior art. It is not clear what is excluded by the language "non-liquid ingredients". Egg is not water or milk so it can be considered as non-liquid ingredients. The specification and claims 4,5,7,8,14 recite the base layer comprises additional ingredients including vegetables and fruits; both fruits and vegetables contain water; thus, the base layer is interpreted to exclude pure liquid sources such as water. Also, the article teaches a recipe in which the base is made by mixing vegetable with cheese and egg. The moisture is squeezed out of the vegetable. Thus, the base is the same as claimed the claimed base layer does not exclude the egg component. It would have been obvious to use high gluten flour because such flour is well known in the art and its use further reduces the carbohydrate content and is equivalent to the use of flour in combination with protein as taught in the prior art because high gluten flour has a higher protein content than regular flour. It would have been obvious to add baking powder to create bubbling appearance or to give little rising to make a firm structure. This is well known in the art as it is common to add baking powder to product

containing flour. It would have been obvious to make up a batch of flour for use in multiple times; this would have been a matter of preference. It would have been obvious to select specific amount of flour depending on the carbohydrate content wanted. Since little flour is used, it is obvious the flour can be as little as 1 teaspoon; the amount used can vary depending on parameters such as carbohydrate content, taste, texture, flavor etc... It would have been obvious to use double acting baking powder when one wants a faster reaction. It would have been obvious to use higher temperature for shorter period of time. It would have been obvious to freeze the product for long term storage. When the product is frozen, it would have been obvious to thaw and reheat it to prepare the product for consumption. As to the language "consisting essentially of" in claim 16, the transitional language "consisting essentially of" is construed as equivalent to "comprising" absent a clear indication in the specification or claims of what the basic and novel characteristics actually are (see MPEP 2111.03). Furthermore, the prior art teaches essentially the same steps as claimed. When a little flour and protein is used in the base layer of the crustless pizza, it would have been obvious to one form the dry mixture of the flour. The recipe teaches to spread the cheese or the vegetable/cheese mixture onto a cooking pan. When the flour is used, it would have been obvious to spread the flour onto the pan because the discussion teaches to use the flour in the crust. It would have been obvious to put the cheese first or flour first as an obvious matter of preference because both will be mixed together during baking to form a layer. The recipes teach to add additional layers and then baking for suitable time and temperature. Thus, the prior art teaches the steps of claim 16.

Applicant's comments concerning the new limitations in the claims are addressed in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 10, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794

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